

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Sparta-Tomah Broadcasting Co., Inc)	FRN: 0002713550
)	
Licensee of Radio Station WKLJ)	File Number: EB-07-CG-164
Facility ID # 61681)	
Sparta, Wisconsin)	
Licensee of Radio Station WFBZ)	File Number: EB-07-CG-218
Facility ID # 56616)	
Trempealeau, Wisconsin)	
)	NAL/Acct. No: 200832320002
)	

FORFEITURE ORDER

Adopted: September 1, 2009

Released: September 3, 2009

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand eight hundred dollars (\$8,800) to Sparta-Tomah Broadcasting Co. Inc. (“Sparta-Tomah”), licensee of AM Station WKLJ in Sparta, Wisconsin and FM Station WFBZ in Trempealeau, Wisconsin, for willfully and repeatedly violating Sections 73.1745 and 73.1125 of the Commission’s Rules (“Rules”)¹ by operating WKLJ at a power of more than 59 watts during nighttime hours, in direct contravention of the terms of its station authorization, and failing to maintain a main studio for WFBZ consistent with the Rules. In this *Order*, we consider Sparta-Tomah’s arguments that the forfeiture amount should be cancelled in light of Sparta-Tomah’s remedial efforts and its history of compliance with the Commission’s Rules.

II. BACKGROUND

2. Beginning on April 4, 2007, an agent with the Chicago Field Office conducted several inspections at stations WKLJ and WFBZ. As described more fully below, the agent found that station WKLJ was failing to reduce power at local sunset time as required by its station authorization and that Sparta-Tomah was not maintaining a main studio for station WFBZ consistent with the Commission’s Rules.

3. The station authorization for WKLJ specifies that the station must reduce power from its authorized daytime power of 5000 Watts to its authorized nighttime power of 59 Watts at local sunset

¹ 47 C.F.R. §§ 73.1745(a), and 73.1125(a)

time. During the April 4, 2007 inspection, a FCC agent reviewed WKLJ's station logs, which indicated that WKLJ was not reducing power at night as required by its license during February, March and April, 2007. Subsequent field strength measurements taken by the agent on May 22, 2007 and May 23, 2007, showed that WKLJ failed to reduce power to the authorized nighttime levels at local sunset time. During a follow-up inspection on May 24, 2007, the station's general manager and engineer confirmed that the station had not been reducing power at local sunset time since at least January 2007.

4. With regard to the WFBZ main studio, the FCC agent found during his May 23, 2007, inspection that the station's purported main studio in Onalaska, WI, which needed to be unlocked by the station's engineer, had assorted non-operational broadcast equipment lying on the floor, no physical radio link or landline telecommunications data link to the WFBZ transmitter, and no employees in the office at that time. During an interview on May 24, 2007, WFBZ's general manager and engineer reported that, after Sparta acquired WFBZ, all of the station's operations, including the broadcast studio, were moved to Sparta's headquarters at 113 West Oak Street in Sparta, WI.² According to the general manager, the Onalaska office had one full time employee until May 21, 2007. The employee's primary responsibility at the Onalaska office was to answer the phone. The general manager reported to the agent that Sparta was in the process of installing the equipment, that it planned to begin operating a studio-to-transmitter link between the Onalaska office and Sparta's headquarters, and that it would be assigning staff to work full-time from the Onalaska office.

5. On May 23, 2008, the Chicago Field Office issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of \$11,000 to Sparta-Tomah for failure to reduce power at local sunset time and failure to maintain a main studio for WFBZ consistent with the Rules.³ In its response, Sparta-Tomah does not dispute the findings in the NAL, but requests that we cancel the forfeiture in light of its remedial efforts and history of compliance.⁴

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*.⁷ In examining Sparta-Tomah's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

² As noted in the NAL, the location of Sparta's headquarters, *i.e.*, 113 West Oak Street, Sparta, Wisconsin, is not within WFBZ's community of license, is not within WFBZ's principal contour, and is not within twenty-five miles of the reference coordinates of Trempealeau, which is the community of license for WFBZ. Thus, under the Commission's main studio requirements, this location is not eligible to be the main studio for WFBZ. See 47 C.F.R. § 73.1125(a).

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832320002 (Enf. Bur., Chicago Office, rel. May 23, 2008).

⁴ Letter from John F. Neely, Counsel for Sparta-Tomah, to FCC Chicago Office, dated June 17, 2008. At the request of FCC staff, Sparta-Tomah submitted a supplemental response to the NAL on June 30, 2009 regarding its remedial efforts. Letter from John F. Neely, Counsel for Sparta-Tomah, to Sharon Webber, dated June 30, 2009.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

7. We decline to cancel or reduce the forfeiture based on Sparta-Tomah's alleged remedial efforts. The Commission consistently has held that reductions are appropriate based on good faith efforts to correct or remedy violations prior to the Commission's involvement.⁹ Sparta-Tomah has not submitted any documentation showing that it had taken steps to correct WKLJ's nighttime over-powered operations prior to the agent's inspection on April 4, 2007. With regard to the main studio for WFBZ, Sparta-Tomah submits documentation showing that it purchased broadcast equipment for the studio in August 2006. Although the equipment was purchased prior to the agent's inspection of the main studio on May 23, 2007, Sparta-Tomah failed to install any of the equipment despite having ample time to do so. Sparta-Tomah's inaction does not constitute a good faith effort to comply and nullifies any downward adjustment in the forfeiture for which Sparta-Tomah may have been entitled for pre-inspection remedial efforts. We therefore conclude that a reduction on this basis is not warranted.

8. Finally, Sparta-Tomah asks that we consider reducing the forfeiture based on its overall record of compliance with the Commission's Rules. We have reviewed our records and find no other violations against the licensee. Under similar circumstances, we have reduced proposed forfeitures, and find that doing so in this case is appropriate.¹⁰ Consequently, we reduce Sparta-Tomah's forfeiture amount from \$11,000 to \$8,800.

IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Sparta-Tomah Broadcasting Co. Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$8,800 for willfully and repeatedly violating Sections 73.1745 and 73.1125 of the Rules.¹¹

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Sparta-Tomah Broadcasting Co., Inc. shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov

⁹ See e.g., *Sutro Broadcasting Corporation*, 19 FCC Rcd 15274, 15277 (2004) (stating that the Commission will generally reduce the assessed forfeiture amount "based on the good faith corrective efforts of a violator when those actions were taken prior to Commission notification of the violation").

¹⁰ See e.g., *Cayuga County Community College*, Forfeiture Order, 2009 WL 1856467 (EB 2009).

¹¹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35(a), 73.1560(a), 73.1745(a), 73.3526(e)(12).

¹² 47 U.S.C. § 504(a).

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Sparta-Tomah Broadcasting Co., Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau